

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO. 3:19-cr-00001-TJC-PDB

UNITED STATES OF AMERICA,
Plaintiff,

v.

JOHN R. NETTLETON,
Defendant.

MOTION REQUESTING LEAVE TO FILE PROPOSED JURY QUESTIONNAIRE AND
MOTION FOR INDIVIDUAL VOIR DIRE ON THE ISSUES OF PRE-TRIAL
PUBLICITY AND BIAS AND PREJUDICE CONCERNING MILITARY ISSUES

Defendant JOHN R. NETTLETON, by and through undersigned counsel, files this motion and states in support:

1. Defendant is charged in a ten-count indictment with obstruction of justice, concealment of material facts, falsification of records, and making false statements.
2. Defendant's case has received a very substantial amount of pre-trial publicity. Defendant's case has been covered heavily in local television and print media, the *Washington Post*, the *Navy Times*, the *Daily Beast*, *McClatchy*, the *Hill*, CNN, Fox News, and many more.¹

¹ <https://www.news4jax.com/news/investigations/update-sought-in-case-of-navy-captain-charged-with-hindering-death-probe>; <https://www.navytimes.com/news/your-navy/2019/01/10/feds-indict-fired-guantanamo-co-for-misleading-death-investigators/>; <https://www.thedailybeast.com/former-gitmo-officer-charged-with-obstructing-death-investigation>; <https://www.mcclatchydc.com/news/nation-world/national/national-security/guantanamo/article224158005.html>; <https://thehill.com/policy/defense/424576-former-guantanamo-commander-charged-with-obstruction-in-civilians-death-at>; <https://www.cnn.com/2019/01/09/politics/former-guantanamo-bay-commander-arrested-doj/index.html>; <https://www.foxnews.com/us/former-guantanamo-commander-charged-with-obstructing-probe-of-civilians-2015-death>

3. Due to the high level of pre-trial publicity, as well as the large number of persons in the Jacksonville area who are either members of the military or closely related to a servicemember, there's a very high likelihood that a substantial number of persons brought in as potential jurors will have some knowledge about this case or preconceived ideas about military service and the obligations of servicemembers. These matters will have a substantial, and potentially prejudicial, effect on Defendant's ability to receive a fair trial.

4. In order to address these issues, Defendant seeks an opportunity to 1) submit a proposed juror questionnaire to be provided to all potential jurors, and 2) participate in individual *voir dire* for purposes of questioning potential jurors about issues related to pre-trial publicity and the potential jurors' views on military service.

MEMORANDUM OF LAW

The constitution guarantees criminal defendants the right to trial by an impartial jury. U.S. Const. Amend. VI.; *Warger v. Shauers*, 574 U.S. 40 (2014). Jurors, of course, must not be exposed to extraneous information. "External matters include publicity and information related specifically to the case the jurors are meant to decide ..." *Id.* (quotation omitted).

The juror questionnaires that Defendant seeks to have distributed will include questions about their exposure to pre-trial publicity, their feelings about the military and the duties of servicemembers, and related matters which may have some bearing on the jurors' ability to be impartial. The questionnaires will allow jurors to answer questions in private, and save a significant amount of court time.

"*Voir dire* examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges." *Mu'Min v. Virginia*, 500 U.S. 415, 431 (1991). "Because the obligation to impanel an impartial jury lies in the first

instance with the trial judge, and because he must rely largely on his immediate perceptions, federal judges have been accorded ample discretion in determining how best to conduct the *voir dire*.” *Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981).

Nonetheless, courts maintain discretion to permit the parties to engage in individual *voir dire*. In this case, limited individual *voir dire* will help further ensure that no jurors have been exposed to pre-trial publicity which would prejudice them against Defendant, and it will allow counsel for both parties to inquire into any possible biases and prejudices that jurors have concerning military service. Such *voir dire*, which would only take up a very short amount of the magistrate court’s time during jury selection, and is necessary to ensure the impaneling of an impartial jury.

WHEREFORE, Defendant requests that this Court grant this motion and allow Defendant to submit a proposed jury questionnaire at a reasonable time before trial, and permit the parties to engage in a limited amount of *voir dire* for the purposes stated herein.

Submitted on July 22, 2019, by

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF, and thereby served on all interested parties.

s/ Daniel Schwarz

Daniel Schwarz